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WASHINGTON POST
18 February 1987

Diversion Data Too Thin To Give Hill, Gates Says

CIA Nominee Draws Skeptical Questions

By Dusko Doder and Walter Pincus
Washington Post Staff Writers

Robert M. Gates, President Reagan's nominee to be director of central intelligence, said yesterday that he did not inform Congress about the possible diversion of money from the Iranian arms sale to aid the Nicaraguan contras because he had "worrisome but extraordinarily flimsy" evidence.

Gates' testimony at his confirmation hearing before the Senate Select Committee on Intelligence prompted sharp and skeptical questioning by the panel, particularly from Sen. Arlen Specter (R-Pa.), who expressed "reservations" about the nomination and "serious concerns" about Gates' role in the Iran-contra affair.

Another Republican, Sen. William S. Cohen (Maine), was even harsher in criticizing Gates' insistence that he had only scant knowledge of the affair. Cohen described Gates, currently the CIA deputy director, as "an ambitious young man, type-A personality, climbing the ladder of success. You basically didn't want to rock the boat. You were not prepared to lay your career on the line over a matter you did not create. You didn't want to know about it."

Gates sought to distance himself from his predecessor, William J. Casey, by saying that had he been Central Intelligence Agency director and known what he knows now, he "probably would have" opposed Reagan's decision to sell arms to Iran. Casey, a key figure in the Iran-contra affair, resigned Feb. 2 after undergoing surgery for a brain tumor.

Gates said that although there was "no formal division of labor" between himself and Casey, "in fact there was an informal division"; Casey "took the lead on Iran and Central America and I took the lead on other issues." When Sen. John W. Warner (R-Va.) said he understood that Gates and Casey had



ROBERT M. GATES
... CIA "learned important lessons"

"close personal and professional ties," Gates replied that it was "primarily a close professional relationship."

In retrospect, Gates said, the CIA's "biggest mistake" was failing to inform Congress about the arms sales to Iran. But Gates then defended Reagan's "constitutional authority" not to notify Congress about covert actions, legal requirements notwithstanding. As part of Reagan's Jan. 17, 1986, intelligence "finding" authorizing the secret sale of arms to Iran, the president instructed then-CIA Director Casey to keep Congress in the dark about the affair.

"The entire undertaking was a unique activity that we are all determined not to repeat," Gates said during a full day of hearings. "Even so, we have learned important lessons for the future."

Gates noted that since becoming acting CIA director he has ordered an investigation of the agency's operations in Central America by the CIA inspector general and disciplined the station chief in Costa Rica for improper contacts with the contras fighting the government of Nicaragua.

The hearing, originally scheduled to take only a day, is scheduled to continue this morning; a closed-door session is also planned. The committee is not expected to vote for at least two weeks; Gates needs a majority to be recommended for Senate confirmation, and before the vote a critical report by the Tower commission on the Iran arms sales-contra aid affair is expected to be made public.

Under tough questioning, Gates, 43, on some issues sought to navigate between the president's publicly stated positions and congressional criticisms.

For example, the committee questioned Gates about a number of controversial issues that have arisen from the CIA's role in the Iran-contra scandal, including the administration assertion at one point that "oral findings" are as valid as written presidential authorizations of covert action.

Gates said that while "a strong legal case" could be made for such oral orders, "I would not proceed on the basis of an oral finding." In cases that demanded "instant actions," Gates added, he would be "willing to proceed on the basis of an oral finding from the president" but would "immediately" ask for the order in writing.

Another controversy—fueled by the 10-month delay in informing Congress about the arms sales to Iran—has centered on the legal requirement that congressional intelligence oversight officials be notified in "timely fashion" of covert actions. Gates said the oversight committees should be informed in advance about covert actions, except in emergencies when they should be informed "after several days" depending on the circumstances of the particular case.

But as senators focused on Gates' role in the Iran-contra affair, and particularly his Dec. 4 testimony before the committee, a majority were clearly dissatisfied with his explanations as well as his conception of the job.

Gates insisted that he was largely unaware of the details of the Iran arms sales until last October. But Sen. Bill Bradley (D-N.J.) charged, "You did not seek to inform yourself. You did not ask to be briefed, you chose not to know."



BY JAMES K.W. ATHERTON—THE WASHINGTON POST

Gates, nominated to head the CIA, swears to tell the truth to Senate committee.

Gates and Sen. Sam Nunn (D-Ga.) also clashed over Gates' conception of the CIA director's obligation to keep Congress informed about potentially illegal activities.

In the course of four hours of questioning, Gates amended his stand on the CIA director's obligation to inform the intelligence committees about possible illegal actions mounted by U.S. government agencies.

Asked by Nunn if he would report illegal activity by the National Security Council to Congress, Gates initially responded that his "first obligation" was to report to the attorney general. Moreover, Gates said his responsibility as director of central intelligence did not extend to the NSC, which he said was not an "intelligence unit."

Gates also said that the NSC's role in the Iran affair was "primarily a diplomatic activity" for which the CIA was providing "operational support."

"Running guns to Iran and ammunition and TOW missiles is a diplomatic activity?" an angry Nunn retorted. "The State Department is going to have to get a different kind of uniform. If you've got no compunction whatsoever to report what is without any doubt an intelligence activity from a congressional point of view . . . we have got a serious problem in the law."

After a brief recess, Gates amended his position and said he did not intend to suggest that he would

not inform Congress of illegal NSC activities. The CIA director, he said, had an obligation to report to Congress and the attorney general "if there is an illegal activity in association with an intelligence activity" on the part of any U.S. governmental department, including the NSC.

Nunn later returned to Gates' assertion that he lacked conclusive proof about the diversion of Iran arms sales money to the contras, which was disclosed Nov. 25 by Attorney General Edwin Meese III. Subsequent events have shown that Casey and other top CIA officials received information from several sources at least as early as October 1986 about the diversion. Nunn asked Gates whether he would have to have absolute proof of illegal activity before blowing the whistle.

"I would be prepared to [notify] at a threshold [of] less than conclusive evidence," Gates replied. He added that he would notify Congress based on a "strong indication" or "good evidence" of illegality.

The committee yesterday released a transcript of Gates' closed-door testimony last Dec. 4. During the confirmation hearing, the senators returned repeatedly to Gates' performance in the Iran arms operation.

When asked why he did not ask for a briefing on the Iran matter when he was promoted from the agency's analytical chief to deputy director last April, Gates acknowledged that, perhaps he should have.

Repeating his Dec. 4 account, Gates said the first indication he received that there might have been a diversion to the contras came on Oct. 1, 1986. At that time, Charles Allen, the CIA national intelligence officer for counterterrorism, told him some of the financial participants were unhappy because they had not been repaid and were threatening to publicly expose the operation. Allen "speculated that some of the funds from the Iranian arms sales may have gone to support the contras," Gates said.

Yesterday, Gates said he was "disturbed" by the threat to the security of the Iranian operation, but he emphasized that there was "no evidence" that such a diversion had taken place or that "CIA, NSC, the White House or the U.S. government might be involved."

Specter, however, pointed out that last December Gates testified he was "startled" by Allen's Oct. 1 briefing and showed much more concern than he seemed to be suggesting in yesterday's testimony.

Yesterday, as in December, Cohen and Specter pressed Gates to explain why he and Casey did not ask Lt. Col. Oliver L. North of the NSC staff about the possible diversion of funds to the contras, during a lunch at the agency on Oct. 9. North made a passing reference to Swiss bank accounts and the contras, according to Gates, which neither CIA official pursued.

In December, Gates said "we didn't want to ask him factual questions about what he was doing with the funds . . . because we knew he was involved, or we assumed . . . that he was involved in efforts involving private benefactors to get money for the contras, and this was one of those areas where we did not pursue obvious lines of questioning because we didn't want to get involved in knowing about the sources of funding."

Gates said yesterday that the CIA's top officials refused to inquire about contra funding, explaining at one point that it was "not because I suspected a problem, but because of our overall concern not to cross the legal limits on us vis-a-vis the contras and their private benefactors."

Meanwhile, sources close to the Tower commission investigating the Iran-contra affair said that former national security adviser Robert C. McFarlane, who is recovering from a drug overdose, will be interviewed Thursday at Bethesda naval hospital. McFarlane had been scheduled to be interviewed by the commission for a second time on Feb. 9, the day he was taken to the hospital after an apparent suicide attempt.